

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 29, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FORREST ARTHUR BEGGS,
Petitioner,

v.

DEAN MASON,
Respondent.

1:24-cv-03002-SAB

ORDER DISMISSING ACTION

By Order filed February 16, 2024, the Court directed Petitioner Forrest Arthur Beggs to show cause why his *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254 should not be dismissed as time-barred under 28 U.S.C. § 2244(d). ECF No. 4. Petitioner is a prisoner currently housed at the Washington Corrections Center in Shelton, Washington. The filing fee has been paid. Respondent has not been served.

On March 14, 2024, the Court granted Petitioner additional time to show cause, extending his deadline until April 19, 2024. ECF No. 6. Petitioner did not file a Response to the Order to Show Cause by this extended deadline, but on April 22, 2024, the Court received via the U.S. Postal Service Petitioner's "Notice In Re: DOC law library Motion for Extension of Time," which the Court construes as Petitioner's Second Motion for Extension of Time. ECF No. 7.

ORDER DISMISSING ACTION # 1

1 On that same date, the Court received Petitioner's Response to the Order to
2 Show Cause, and another electronically filed "Notice In Re: DOC law library
3 Motion for Extension of Time." ECF Nos. 9 and 10. Based on Petitioner's
4 explanation of his efforts to submit his Response electronically, *see* ECF No. 7 at
5 1–2, the Court considers the Response to be timely filed. Therefore, Petitioner's
6 construed Motions for Extension of Time, ECF Nos. 7 and 10, are **DENIED as**
7 **moot**. Petitioner is still reminded of the requirement that he submit his documents
8 electronically.

9 In the Order to Show Cause, the Court specifically noted that Petitioner
10 failed to provide relevant information regarding any Personal Restraint Petition
11 ("PRP") he may have filed in state court. ECF No. 4 at 2–3. After review of
12 Petitioner's submissions, including his 20-page Response and his 75 pages of
13 exhibits, ECF No. 9, the Court finds that Petitioner has still failed to provide any
14 information regarding state court PRPs that might have statutorily tolled the federal
15 limitations period under 28 U.S.C. § 2244(d)(2). Consequently, Petitioner has
16 failed to demonstrate that his federal habeas corpus petition was timely filed on
17 January 11, 2024.

18 Petitioner states that his judgment and sentence for unspecified offenses was
19 entered on October 28, 2021, and he received an exceptional sentence of 300
20 months. ECF No. 9 at 2. Petitioner states that he filed a *pro se* Notice of Appeal on
21 October 27, 2022, that was dismissed as untimely on April 12, 2023, with a
22 mandate issuing on May 18, 2023. *Id.* Although Petitioner does not state that he
23 filed a PRP or when he did so, he indicates that the Court of Appeals dismissed a
24 PRP on May 1, 2023. *Id.* at 3. He states that his attorney filed a Motion for
25 Discretionary Review to the Washington State Supreme Court on May 30, 2023,
26 and a Motion to Modify Ruling Denying Review on July 6, 2023. *Id.* Petitioner
27 does not state the disposition of the Motion to Modify, but the attached Certificate
28 of Finality for Washington State Court of Appeals, Division III, case No. 39314-3-

1 III, indicates the Order Dismissing Personal Restraint Petition, filed on May 1,
2 2023, became final on September 6, 2023. ECF No. 9-1 at 50.

3 Again, Petitioner provides no information from which the Court could infer
4 that this PRP was filed at any time prior to November 29, 2022, so that it might
5 statutorily toll the federal limitations period under 28 U.S.C. § 2244(d)(2). A
6 review of state court records¹, however, indicates that Mr. Beggs' PRP, case No.
7 39314-3-III was filed on October 28, 2022.

8 This Court assumes the federal limitations period commenced on November
9 29, 2021, based on Petitioner's failure to appeal his judgment and sentence, and his
10 failure to present a statutory basis to delay the running of the limitations period.
11 See ECF No. 4 at 3; 28 U.S.C. § 2244(d)(1). Consequently, by October 28, 2022,
12 332 days of the federal limitations period had expired, leaving Petitioner only 33
13 days to file a federal habeas corpus petition after his state court collateral
14 proceedings concluded. Even if the Court were to consider September 6, 2023, as
15 the conclusion of those proceedings, the federal limitations period would have
16 expired on or about October 9, 2023. Therefore, the petition filed on January 11,
17 2024, ECF No. 1, is untimely by more than three months. Petitioner's additional
18 arguments, ECF No. 9 at 2–19, are not relevant in light of his failure to
19 demonstrate that his federal habeas corpus petition was timely filed.

20 In an apparent attempt to invoke equitable tolling, Petitioner asserts that his
21 trial counsel was responsible to file an appropriate notice of appeal. ECF No. 9 at
22 6. Petitioner appears to claim that he diligently pursued his rights by hiring a
23 private investigator and expressing that he intended to file a notice of appeal and
24 he hired a lawyer to represent him. *Id.* at 7. Yet, Petitioner still fails to state what
25 prevented him from filing his notice of appeal by November 27, 2021, or his
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27 ¹ *Headwaters Inc. v. U.S. Forest Service*, 399 F.3d 1047, 1051 n.3 (9th Cir. 2005)
28 (noting it is appropriate to take judicial notice of materials from another tribunal).

1 federal habeas corpus petition by October 9, 2023. Petitioner seems to indicate that
2 he filed complaints against his attorney with the Washington State Bar in
3 December 2023 and January 2024. *Id.* at 8. Nevertheless, this does not excuse his
4 failure to timely file his federal habeas corpus petition.

5 “[A] petitioner is entitled to equitable tolling only if he shows (1) that he has
6 been pursuing his rights diligently, and (2) that some extraordinary circumstance
7 stood in his way and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631,
8 649 (2010) (internal quotation marks omitted). Petitioner must show that some
9 “external force” caused his untimeliness, rather than mere “oversight,
10 miscalculation or negligence.” *WaldronBRamsey v. Pacholke*, 556 F.3d 1008, 1011
11 (9th Cir. 2009) (internal quotation marks omitted). In other words, Petitioner must
12 have been delayed by circumstances “beyond[his] direct control,” and not by his or
13 his counsel’s “own mistake.” *Harris v. Carter*, 515 F.3d 1051, 1055 (9th Cir.
14 2008). Here, Petitioner asserts that his trial counsel should be faulted for not filing
15 a timely notice of appeal. Nevertheless, this does not constitute an extraordinary
16 circumstance that prevented him from timely filing his federal habeas corpus
17 petition. *Id.* at 1055.

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1 Accordingly, **IT IS ORDERED:**

2 1. The Petition for Writ of Habeas Corpus, ECF No. 1, is **DISMISSED**
3 **with prejudice** as time barred under 28 U.S.C. § 2244(d).

4 2. Petitioner's construed Motions for Extension of Time, ECF Nos. 7
5 and 10, are **DENIED as moot**.

6 3. The Court certifies there is no basis upon which to issue a certificate
7 of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

8 **IT IS SO ORDERED.** The Clerk of Court shall enter this Order, enter
9 judgment, provide copies to Petitioner, and **CLOSE** this file.

10 **DATED** this 29th day of April 2024.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

16 Stanley A. Bastian
17 Chief United States District Judge
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